

TITLE 329 SOLID WASTE MANAGEMENT BOARD

IDEM'S SUGGESTED CHANGES TO PROPOSED RULE AT 329 IAC 11.5 CONCERNING REGISTRATION OF BIOMASS ANAEROBIC DIGESTION FACILITIES AND BIOMASS GASIFICATION FACILITIES AND AMENDMENTS TO EXCLUDED FACILITIES AT 329 IAC 11-3-1

LSA Document #09-193

Revisions made by LSA under the Administrative Rules Drafting Manual (IC 4-22-8-4(a)(2)) and incorporated into the printed version (LSA Document #09-193) have been made in the version of the rule presented to the board for final adoption. These changes are NOT listed in this list of suggested changes. Page references are to the rule as preliminarily adopted with IDEM's Suggested Changes included.

1. Page 4 329 IAC 11.5-1-1(a) Revise and reorganize as follows:

Sec. 1. (a) This article regulates biomass anaerobic digestion facilities and biomass gasification facilities through the following:

- (1) Providing for the registration, ~~including of the~~ construction and expansion, of facilities storing, reusing, or processing biomass or appropriate feedstock for:**
 - (A) energy production; or**
 - (B) ~~reusable treated biomass and appropriate feedstock~~ production of a reusable byproduct, such as animal bedding.**
- (2) Providing standards for storing or processing biomass or appropriate feedstock for:**
 - (A) energy production; or**
 - (B) ~~reusable treated biomass and appropriate feedstock~~ production of a reusable byproduct, such as animal bedding.**
- (3) Providing cleanup and closure standards for facilities that have stored or processed biomass or appropriate feedstock for:**
 - (A) energy production; or**
 - (B) ~~reusable treated biomass and appropriate feedstock~~ production of a reusable byproduct, such as animal bedding.**
- (4) Providing for financial assurance for the cleanup and closure of facilities that have stored or processed biomass or appropriate feedstock for:**
 - (A) energy production; or**
 - (B) ~~reusable treated biomass and appropriate feedstock~~ production of a reusable byproduct, such as animal bedding.**

2. Page 4 329 IAC 11.5-1-1(b): Delete the words “**reusable treated biomass and appropriate feedstock**” and add the words “**production of a reusable byproduct**” Delete the words “**disposal or**” after the words “**does not apply to**”.

3. Page 4-5 329 IAC 11.5-1-2: Revise and reorganize as follows:
Sec. 2. This article applies to a person doing any of the following:

- (1) Constructing or expanding a biomass anaerobic digestion facility or a biomass gasification facility for;
 ~~(A) recovery of materials energy production;~~ or
 ~~(B) energy recovery of reusable byproduct.~~
- (2) Storing biomass or appropriate feedstock for;
 ~~(A) recovery of materials energy production;~~ or
 ~~(B) energy recovery of reusable byproduct,~~
 through a biomass anaerobic digestion facility or a biomass gasification facility.
- (3) Processing or reusing a biomass or appropriate feedstock for;
 ~~(A) recovery of materials energy production;~~ or
 ~~(B) energy recovery of reusable byproduct,~~
 through a biomass anaerobic digestion facility or a biomass gasification facility.
4. Page 6 329 IAC 11.5-2-2: Delete the words “**livestock operation residues,**” after the word “**grease**”.
5. Page 7-8 329 IAC 11.5-2-6: Add the definition of “**Byproduct**” as follows and renumber subsequent definitions appropriately:
 Sec. 6. "Byproduct" means any material that is recovered after processing through a facility registered under this article and then reused.
6. Page 8 329 IAC 11.5-2-8: Delete “**to be followed for**” and reorganize as follows:
 (1) in the event of an emergency response in the event of an emergency that causes the release of contaminants into the environment; or
 (2) for the method or methods of biomass and appropriate feedstock management or disposal if the facility is unable to operate or process biomass and appropriate feedstock for seventy-two (72) hours or longer.
7. Page 9 329-11.5-2-11 Delete the definition of “**Generator**” and renumber only the definition of “**Financial Assurance**” to “**329 IAC 11.5-2-11**”.
8. Page 10 329 IAC 11.5-2-18: In the definition of “**Residue**”, delete the words “**discarded biomass and appropriate feedstock**” and add the word “**material**”. After the word “**processing**” add the words “**of biomass and appropriate feedstock that must be discarded including unusable biomass, appropriate feedstock, or reusable byproducts.**”
9. Page 12 329 IAC 11.5-3-1 (6)(F): Delete “**(F) 329 IAC 11.5-9,**”.
10. Page 13 329 IAC 11.5-4-1(a): Add the words “**for five (5) years**” after the word “**renewed**” and a period at the end of the sentence.
11. Page 13 329 IAC 11.5-4-1(b)(2): Add the words “**At any time, one copy of a registration may be submitted electronically via electronic media.**”
12. Page 13 329 IAC 11.5-4-1(c): Delete the words “**However, at any time a registration may be submitted electronically via electronic media.**”

13. Page 13 329 IAC 11.5-4-1(d): Add the words **“The renewal must include an update for the cost of the surety bond to meet the financial assurance requirements in rule 8. If the maximum on-site tonnage estimate has not changed from the previous registration, the update for the cost of the surety bond will be calculated by multiplying the final figure of the most recent surety bond amount in the original registration, a modification, or most current renewal by an inflation factor of ten percent (10%). The recalculated amount will be the surety bond amount required for financial assurance in a renewal.”**

14. Page 14 329 IAC 11.5-4-1(f): delete **“a notification to the commissioner for approval of that biomass or appropriate feedstock and receive an acknowledgement letter before use.”** and insert **“documentation for the new biomass and appropriate feedstock and approvals are as follows:**

(1) Biomass with the same storage and handling is considered approved within fifteen (15) days unless a denial is issued by the commissioner.

(2) Appropriate feedstock with the same storage and handling is considered approved within thirty (30) days unless a denial is issued by the commissioner.

(3) Biomass or appropriate feedstock that has different storage or handling requirements can only be taken by the facility after the receipt by the facility of a commissioner approval.”

15. Page 14 329 IAC 11.5-4-1(g)(5): Delete the following words **“The type and maximum amounts, in tons, of biomass or appropriate feedstock that are delivered daily and the maximum amounts of biomass, appropriate feedstock, and residues to be stored on-site and the probable duration of storage in days. ”** and add **“At a minimum the following information:**

(A) The physical or chemical characteristics of the biomass or appropriate feedstock.

(B) The source of the biomass or appropriate feedstock.

(C) A description of the process that created the biomass and appropriate feedstock.

(D) Maximum amounts, in tons, of biomass or appropriate feedstock that are delivered daily, weekly or monthly basis.

(E) The maximum amounts of biomass, appropriate feedstock, and residues to be stored on-site and the probable duration of storage in days.

(F) Identification of any reusable byproducts.

(G) Other information requested by the commissioner.”

16. Page 14 329 IAC 11.5-4-1(g)(6): Delete the words **“Incoming biomass and appropriate feedstock testing and”**.

17. Page 15 329 IAC 11.5-4-1(g)(9): Delete the word **“or”** after the word **“biomass”** and add the words **“, reusable byproducts, or residue”** at the end of (9).

18. Page 15 329 IAC 11.5-4-1(g)(11): Add the words “**approvals or**” after the word “**Other**”.
19. Page 15 329 IAC 11.5-4-1(g)(13)(A): Add the words “**management or**” after the first word “**feedstock**”. Replace the words “**alternative fuel**” with the words “**biomass and appropriate feedstock**”.
20. Page 15 329 IAC 11.5-4-1(g)(13)(B): Add the number “**(5)**” after the word “**subdivision**”.
21. Page 16 329 IAC 11.5-4-1(g)(16): Delete the words “**329 IAC 11.5-9-1**” and add the words “**329 IAC 11.5-8-1, if applicable**”.
22. Page 17 329 IAC 11.5-4-2(a): Add the words “**and registration under 329 IAC 11.7 or permitting under 329 IAC 11 is not possible**” after the word “**denied**”.
23. Page 17 329 IAC 11.5-5-1(a): Add a comma after the word “**biomass**”. Delete the word “**and**” after the word “**biomass**” and delete the word “**or**” and add the word “**and**” after the word “**feedstock**”.
24. Page 17 329 IAC 11.5-5-1(b)(1): Delete the word “**residue**” and add the words “**reusable byproducts**”.
25. Page 18 329 IAC 11.5-5-1(b)(1)(A): Delete the word “**residue**” and add the words “**reusable byproducts**”.
26. Page 18 329 IAC 11.5-5-1(b)(1)(B): Delete the word “**residue**” and add the words “**reusable byproducts**”.
27. Page 18 329 IAC 11.5-5-1(b)(2): Add the words “**reusable byproducts**” after the word “**feedstock**”. Add the words “**or documentation of the short term availability of certain vegetative biomass**” after the word “**storage**”.
28. Page 18 329 IAC 11.5-5-1(b)(3): Delete the word “**residue**” and add the words “**reusable byproducts**”.
29. Page 18 329 IAC 11.5-5-1(b)(4)(B): Delete the word “**residue**” and add the words “**reusable byproducts**”.
30. Page 19 329 IAC 11.5-6-1(a)(2): Add the words “**or only dry biomass**” after the words “**uncontaminated wood**”. Delete the words “**a pad**” and replace with the words “**on an impervious surface**”.
31. Page 19 329 IAC 11.5-6-1(a)(5): Delete the words “**Access control to the building.**” and renumber subsequent subdivisions.

32. Page 19 329 IAC 11.5-6-1(a)(7): Delete the words **“Putrescible biomass and appropriate feedstock that is stored must be fed into the biomass anaerobic digestion facility or biomass gasification facility within seventy-two (72) hours of receipt at the registered facility. ”** and add the words **“Biomass and appropriate feedstock that is stored must be fed into the biomass anaerobic digestion facility or biomass gasification facility before it can become putrid.”**.
33. Page 19 329 IAC 11.5-6-1(b): Delete the words **“biomass or”** and add **“or residues”** after the word **“feedstock”**.
34. Page 19 329 IAC 11.5-6-1(c): Delete the words **“until certification of closure is deemed adequate by the commissioner under 329 IAC 11.5-8-1(f)”** and add the words **“until certification of closure is deemed adequate by the commissioner under 329 IAC 11.5-75-1(f):”**.
35. Page 19 329 IAC 11.5-6-1(c)(3) and 329 IAC 11.5-6-1(c)(4): Delete and renumber subsequent subdivisions.
36. Page 20 329 IAC 11.5-6-1(g): Delete the words **“storage area, or vehicle”** and add the words **“within a town or city limits”** after the word **“residue”**
37. Page 20 329 IAC 11.5-6-1(h): Delete the words **“The land, building, vehicles, and containers must be maintained clean and free of biomass, appropriate feedstock, residues, other than in the designated storage areas.—”** and add the words **“Biomass, appropriate feedstock, reusable byproducts, or residues may not be stored in areas other than in designated, approved storage areas.”**
38. Page 20 329 IAC 11.5-7-1 DISPOSAL: Delete this rule:
39. Page 21 329 IAC 11.5-7-1: Add the following new 329 IAC 11.5-7-1 and renumber the subsequent Financial Assurance as 329 IAC 11.5-8-1:

Rule 7 Closure

329 IAC 11.5-7-1 Closure

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) The owner or operator must notify the commissioner in writing at least fourteen (14) days before the date when the registered facility permanently ceases accepting biomass or appropriate feedstock.

(b) All biomass, appropriate feedstock, reusable byproduct, and residue must be:

(1) removed from the:

(A) building;

- (B) containers;
- (C) storage areas;
- (D) lagoons;
- (E) tanks; and
- (F) vehicles; and

(2) disposed of according to 329 IAC 11.5-7-2;
within sixty (60) days of the registered facility no longer accepting biomass and appropriate feedstock. Facilities that have a confined feeding operation (CFO) approval or a concentrated animal feeding operation (CAFO) permit and that cease processing biomass are required to comply with that permit or approval.

(c) Any contaminants resulting from the storage or processing of biomass, appropriate feedstock, reusable byproduct, or residue that are above risk based standards under IC 13-25-5-8.5 must be contained, removed and disposed of according to 329 IAC 11.5-7-2. This requirement does not include any contaminants that the owner or operator can demonstrate were existing before the storage or processing of biomass or appropriate feedstock.

(d) A registered facility must be certified closed under subsection (e) after all biomass, appropriate feedstock, and residue are removed and disposed.

(e) The owner or operator must send a certification statement indicating that the requirements of this section have been met to the commissioner within thirty (30) days after completion of the closure.

(f) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining financial assurance. (Solid Waste Management Board; 329 IAC 11.5-7-1)

40. Page 22 329 IAC 11.5-7-2: Add the following new 329 IAC 11.5-7-2:

329 IAC 11.5-7-2 Reusable byproduct and residue disposal

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. Persons disposing of reusable byproduct or residue must reuse or make a waste determination and dispose as applicable at either of the following:

- (1) A permitted facility or method allowed by the following:
 - (A) 327 IAC 6.1
 - (B) 329 IAC 11-3-1
 - (C) 329 IAC 3.1.
 - (D) 329 IAC 4.1.
 - (E) 329 IAC 10.
 - (F) Facilities permitted under 329 IAC 11.

(G) 329 IAC 13.

(2) A facility out of state.

(Solid Waste Management Board; 329 IAC 11.5-7-2)

41. Page 22-23 329 IAC 11.5-8-1: Delete all of the “**329 IAC 11.5-8-1 Closure**” rule and renumber “**329 IAC 11.5-9-1 Financial Assurance**” to “**329 IAC 11.5-8-1 Financial Assurance**”.
42. Page 23 329 IAC 11.5-8-1(a): Add the word “**only**” after the words “**that are processing**”.
43. Page 23 329 IAC 11.5-8-1(b): Delete the words “**thirty dollars (\$30)**” and replace with the following at the end of the sentence “**ninety dollars (\$90), unless a demonstration of justified lower disposal costs is submitted for commissioner approval. This approval will be reconsidered with subsequent renewals that still must comply with the inflation calculation required by 329 IAC 11.5-4-1(d).**”
44. Page 24 329 IAC 11.5-8-1(c)(2)(B): Delete the citation “**329 IAC 11.5-8-1**” and replace with “**329 IAC 11.5-7-1**”.